

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 39 Worker Safety with Respect to Agricultural Pesticides
SPONSOR(S): Peterman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Workforce and Economic Development</u>	_____	<u>Winker</u>	<u>Billmeier</u>
2) <u>Commerce</u>	_____	<u>Winker</u>	<u>Billmeier</u>
3) <u>Agriculture</u>	_____	_____	_____
4) <u>Finance and Tax</u>	_____	_____	_____
5) <u>Agriculture and Environment Approp. Sub.</u>	_____	_____	_____
6) <u>Appropriations</u>	_____	_____	_____

SUMMARY ANALYSIS

HB 39 creates the "Florida Agricultural Worker Safety Act" and requires the act to be administered by the Department of Agriculture and Consumer Services. The bill provides legislative intent ensuring that agricultural workers are protected from and receive information about pesticides. The bill creates definitions and requires the Department of Agriculture and Consumer Services to adopt by rule the regulations established by the United States Environmental Protection Agency's Labeling Requirement for Pesticides and Devices and the Worker Protection Standards.

The bill requires agricultural employers to make available certain information on pesticides to an agricultural worker within 2 working days of a request by the worker, a designated representative of the worker, or any medical personnel treating the worker.

The bill makes it unlawful for an agricultural employer to fail to provide required pesticide information or to take any retaliatory action against any agricultural worker exercising his or her rights under the federal Worker Protection Standards. The bill provides for penalties against agricultural employers who violate the provisions of the act, requires the department to monitor complaints of retaliation against workers, and report such findings to the Legislature on October 1, 2007.

The Department of Agriculture and Consumer Services estimates that, for FY 2004-05 it would cost \$469,890. [See Fiscal Analysis.]

The bill becomes effective on July 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME h0039.com.doc
DATE February 12, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill requires additional staff for the Department of Agricultural and Consumer Services and places additional requirements on these staff. The bill also places additional requirements on agricultural employers.

B. EFFECT OF PROPOSED CHANGES:

HB 39 creates the “Florida Agricultural Worker Safety Act” and requires the act to be administered by the Department of Agriculture and Consumer Services. The bill provides legislative intent ensuring that agricultural workers are protected from and receive information about pesticides. The bill creates definitions and requires the Department of Agriculture and Consumer Services to adopt by rule the regulations established by the United States Environmental Protection Agency’s Labeling Requirement for Pesticides and Devices and the Worker Protection Standards.

The bill requires agricultural employers to make available certain information on pesticides to an agricultural worker within 2 working days of a request by the worker, a designated representative of the worker, or any medical personnel treating the worker. Such information includes:

- The chemical name and the common name of the agricultural pesticides;
- The hazards or other risks in the use of the pesticide;
- The potential for fire, explosions, corrosivity, and reactivity;
- The known acute and chronic health effects from exposure to the pesticide;
- The primary routes of entry and symptoms of overexposure;
- The proper precautions, handling practices, safety equipment, and other safety precautions in the use of pesticides;
- The emergency procedures for spills, fire, disposal, and first aid;
- A description of known potential health risks from the use of agricultural pesticides written in lay terms; and
- Information on who compiled the information and when it was compiled.

The bill makes it unlawful for an agricultural employer to fail to provide required pesticide information or to take any retaliatory action against any agricultural worker exercising his or her rights under the federal Worker Protection Standards or the bill. The bill provides relief for an agricultural worker who feels they have been retaliated against for exercising any rights under the United States Environmental Protection Agency Worker Protection Standards or the newly created Part II of chapter 487¹. The bill provides penalties set forth in Part I of the bill to any agricultural employers who violate any provision of

¹ See s. 448.103(2), F.S., which provides relief for an employee subject to retaliatory personnel action which may include an injunction restraining the employer from retaliatory action against the employee, reinstatement of the employee to the same position held at the time of the retaliatory personnel action, reinstatement of benefits and seniority rights, and compensation of lost wages and other remuneration.

the newly created Part II of the bill.² The bill requires the department to monitor complaints of retaliation against workers, and report such findings to the Legislature on October 1, 2007.

The bill also makes conforming changes in chapter 487, s. 403.088, s. 482.242, s. 500.03, and s. 570.44, F.S., by changing the word “chapter” to “part”, since the bill creates Part II in chapter 487.

The Department of Agriculture and Consumer Services estimates that, for FY 2004-05 it would cost \$469,890.

The bill becomes effective on July 1, 2004.

AGRICULTURAL WORKER SAFETY PROVISIONS IN CURRENT LAW

Federal Laws Related to the Use of Pesticides and Farm Workers

In August 1992, the federal Environmental Protection Agency (EPA) promulgated the Worker Protection Standards for Agricultural Pesticides (WPS). The purpose of these standards is to reduce the risks of illness or injury resulting from worker’ and handlers’ occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses and forests and also from accidental exposure of workers and other persons to pesticides. The standards also require workplace practices designed to reduce or eliminate exposures to pesticides and to exposure-related emergencies.

The federal WPS requires employers to adhere to strict regulations designed to ensure the safety of agricultural workers. The standards require employers to:

- provide written or oral information to agricultural workers stating the type of pesticides used on the crops being harvested;
- provide personal protective equipment designed to protect the body from contact with pesticides to each farm worker;
- restrict reentry of the workers into fields after pesticides have been sprayed and advise each worker about the spraying; and
- provide facilities for the farm workers near to where they work where they can wash their hands to clean them of pesticide residue and for emergency rinsing of the eyes and mouth.

The WPS also prohibit employers from exposing farm workers to pesticides through direct spraying or drift away pesticide spray from airplanes or tractors.

There are two main offices within the federal EPA responsible for pesticide-related issues. The Office of Pesticide Programs was established to protect the public health and the environment from the risks posed by pesticides, to promote safer means of pest control, and to ensure that pesticides are fairly and efficiently regulated. The Office of Enforcement and Compliance Assurance is responsible for ensuring compliance with federal environmental statutes through regional offices across the country.

The federal Occupational Health and Safety Act of 1970 provides farm workers who work on farms with 11 or more workers with basic field sanitation facilities.

Florida Laws Related to the Use of Pesticides and Farm Workers

Chapter 487, F.S., is the Florida Pesticide Law. The Department of Agriculture and Consumer Services (DACs) is the primary agency for administering state pesticide laws and regulations. Chapter 487,

² See s. 487.175, F.S., which provides for penalties including the imposition of an administrative fine not to exceed \$10,000 for each violation and also the agriculture employer commits a misdemeanor of the second degree punishable as provided in ss. 775.082 and 775.083, F.S.

F.S., regulates the distribution, sale, and use of pesticides [except as provided in Chapter 388, F.S., (mosquito control) and Chapter 482, F.S., (pest control)] and protects people and the environment from the adverse effects of pesticides.

Section 487.021(49), F.S., defines pesticide as "...any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses, bacteria, or fungi on or in living humans or other animals, which the department [DACS] by rule declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant..."

The DACS, pursuant to Chapter 487, F.S., is required to have persons who apply restricted-use pesticides licensed and certified to use such pesticides. The department can issue certified applicator licenses for public applicators, private applicators, and commercial applicators. In order for a person to be a licensed certified pesticides applicator, they must demonstrate competence by way of a written or oral examination that demonstrates adequate knowledge concerning the proper use and application of restricted-use pesticides. The applicant for a certified applicator's license must demonstrate minimum competence as to:

- the proper use of pesticide application equipment;
- the environmental hazards that may be involved in applying restricted-use pesticides;
- calculating the concentration of restricted-use pesticides to be used in particular circumstances;
- identifying common pests to be controlled and the damage caused by such pests;
- using of protective clothing and respiratory equipment required during the handling and application of restricted-use pesticides;
- precautions to be followed in the disposal of containers, as well as cleaning and decontamination of the equipment used in the application of the pesticides;
- applicable state and federal pesticide laws, rules, and regulations; and
- general safety precautions.

The DACS is authorized through Chapter 487, F.S., to adopt by rule the primary standards established by the U.S. Environmental Protection Agency with respect to pesticides. Should any federal law preempt any provision in Chapter 487, F.S., any other provision in the chapter shall apply. Chapter 487, F.S., is intended as the comprehensive and exclusive regulation of pesticides in the state [s. 487.051(2), F.S.].

Section 487.0615, F.S., creates within the DACS the Pesticide Review Council. Its purpose is to advise the Commissioner of Agriculture regarding the sale, use, and registration of pesticides and to advise government agencies with respect to activities related to their responsibilities regarding pesticides. The council is comprised of 11 scientific members from state agencies and state universities and is empowered to do the following:

- Recommend appropriate scientific studies on any registered pesticide when data indicate that the pesticide could pose an unreasonably adverse effect on the environment or human health.
- Recommend actions to be taken by the DACS with respect to the sale or use of a pesticide which the council has reviewed.
- Provide advice or information to government agencies with respect to activities related to their responsibilities regarding pesticides.
- Review biological and alternative controls to replace or reduce the use of pesticides.
- Consider the development of appropriate advice or recommendations on a pesticide when data indicate that the pesticide could pose an unreasonably adverse effect on the environment or human health.
- Assist the DACS in the review of registered pesticides which are selected for special review based upon potential environmental or human health effects.

Section 487.1585, F.S., provides for duties of a pesticide licensee supervising unlicensed pesticide applicators and field workers. A licensed pesticide applicator must provide adequate instruction and training on the safety procedures required for applying pesticides. Such training and instruction must include:

- safety procedures to be followed as specified on the label of the pesticide;
- safety clothing and equipment to be worn;
- common symptoms of pesticide poisoning;
- the dangers of eating, drinking, or smoking while handling pesticides; and
- where to obtain medical treatment if needed.

Prior Law: 1994 Florida Agricultural Worker Safety Act

The 1994 Legislature created the Florida Agricultural Worker Safety Act [sections 27 and 28, ch. 94-233, L.O.F.] which was repealed on January 1, 1998.

The Act authorized the Department of Agriculture and Consumer Services to adopt by rule the requirements of the federal Environmental Protection's Labeling Requirement for Pesticides and Devices and the Worker Protection Standards for Agricultural Pesticides. The Act required agricultural employers to provide agricultural workers and others with specific written information concerning agricultural pesticides. The Act provided penalties for agricultural employers who violated any provisions of the Act. The Act required the department to monitor agricultural workers' complaints of retaliation from employers for raising issues related to the Act and to submit a report to the Legislature on such complaints.

The Act made it unlawful for any agricultural employer to fail to provide agricultural pesticide information as required in the Act or to take any retaliatory action against any worker for exercising any right under the federal Worker Protection Standard.

The Act required the department to produce a pesticide safety information sheet for agricultural workers. The Act required, as part of the information provided to farm workers, when pesticides were applied within the previous 30 days and detailed information on health and safety issues. The Act also provided for agricultural workers who had been retaliated against by employers for raising issues related to the Act to seek relief under Florida law.

The Act was repealed effective January 1, 1998, by section 28 of ch. 94-233, L.O.F.

Pesticides and the Florida Department of Health

In 1997, the Florida Department of Health began a five-year multi-state project under the National Institute for Occupational Safety and Health of the federal Center for Disease Control called the Sentinel Event Notification System for Occupational Risk Program (SENSOR).

The purpose of the SENSOR project was to build and maintain occupational illness and injury surveillance capacity with state health departments. One of the illnesses reported under SENSOR is acute occupational pesticide-related illnesses and injuries. Besides maintaining a record of the incidents of occupational pesticide-related cases, SENSOR also provided for the performance of in-depth investigations and preventive interventions aimed at particular industries. The surveillance for occupational pesticide-related illness and injury is designed to protect farm workers by determining the underlying causes for overexposure to pesticides in the workplace and to serve as an early warning system of any harmful effects not detected by the manufacturer testing of pesticides.

According to information from the Department of Health, orchards, nurseries, and farms occupy more than 25% of Florida's land area. Also, in Florida, there are more than 40,000 commercial farmers and 60,000 to 400,000 migrant farm workers.

Florida's pesticide exposure surveillance program was a collaborative effort between state agencies, county health units, the medical establishment, state universities, and farm owners and groups, and farm worker organizations and groups. Short-term outcomes of the project were to increase the reporting of occupational pesticide-related cases, describe the magnitude and trend of such cases, identify populations at risk, identify emerging pesticide problems, and increase the awareness among farm workers and the public of pesticide-related illnesses. Long-term outcomes of the project were to reduce exposure to pesticides and reduce the toxicity of pesticide exposure.

According to a 1999 report on the progress of the SENSOR program, the Florida Department of Health reported that the number of cases of acute pesticide-related illnesses detected by the department rose from an average of about 4 cases in previous years to 171 cases in 1999.

Florida Farm Workers and State and Federal Pesticide Protection Laws

An article entitled Assessing the Effectiveness of Executive Order 12898: Environmental Justice for All?, by Celeste Murphy-Greene (San Diego State University) and Leslie Leip (Florida Atlantic University) in the November-December 2002 issue of *Public Administration Review* examined the extent to which the goals of federal and state laws related to pesticides and farm workers have been effective. Farm workers in central and south Florida were interviewed to determine the extent to which federal and state pesticide safety standards were adhered to.

The authors found that many farm workers have been exposed to pesticides in the workplace and that standards and requirement of federal and state laws have been ineffective. For example, federal Worker Protection Standards are intended to protect farm workers from being exposed to pesticide spraying and applications. The authors found that 10 percent of the farm workers interviewed had been directly sprayed with pesticides while they worked in the fields and 64 percent reported that an airplane or tractor had applied pesticides on crops next to the fields where the farm workers were working. When asked if they had received any training on the dangers of pesticides or what types of protective clothing they should wear, only 53 percent of the farm workers interviewed said they had received such training. The majority of the farm workers reported that they wore minimal if any protective clothing in the fields that had been treated with pesticides. In terms of sanitation and safety facilities at the work site, about 28 percent of the farm workers reported that there were no hand-washing facilities and 12 percent were not provided restrooms at the work site.

The authors conclude that the environmental risk of farm workers in Florida is a clear health and safety problem and that farm workers continue to have a high risk of exposure to pesticides in the fields. The authors recommend that the pesticide application monitoring system needs to be improved; that low literacy and language barriers need to be given more attention in terms of training and information sharing; and that increased resources need to be provided at the state and federal levels to provide for additional staff to monitor the use of pesticides on farms and to provide additional training to employers and farm workers.

C. SECTION DIRECTORY:

Section 1: Creates s. 487.2011, F.S.; creating Part II of Chapter 487; providing the title "Florida Agricultural Worker Safety Act"; and requires the act to be administered by the Department of Agriculture and Consumer Services.

Section 2: Creates s. 487. 2021, F.S.; providing legislative intent ensuring agricultural workers are protected from and receive information about pesticides.

Section 3: Creates s. 487.2031, F.S.; providing definitions.

Section 4: Creates s. 487.2041, F.S.; requiring the Department of Agriculture and Consumer Services to adopt by rule the regulations established by the United States Environmental Protection Agency's Labeling Requirement for Pesticides and Devices and the Worker Protection Standards.

Section 5: Creates s. 487.2051, F.S.; requiring agricultural employers to make available to a worker certain information on pesticides; providing that such information shall be provide a worker within 2 working days of a request by a worker, a designated representative of the worker, or medical personnel treating the worker.

Section 6: Creates s. 487.2061, F.S.; making it unlawful for an agricultural employer to fail to provide required pesticide information or to take any retaliatory action against any worker exercising his or her rights under the federal Worker Protection Standards.

Section 7: Creates s. 487.2071, F.S.; providing for penalties against agricultural employers who violate the provisions of the act; requiring the Department of Agricultural and Consumer Services to monitor complaints of retaliation against workers and report such findings to the Legislature on October 1, 2006.

Sections 8-32: Amends ss. 487.011-175, F.S.; making technical corrections changing the term "chapter" to "part" and makes these sections conform to the bill which creates Part II of Chapter 487.

Sections 33-36: Amends subsection (1) of s. 403.088, subsection (1) of s. 482.242, paragraph (x) of subsection (1) of s. 500.03, and subsections (1) and (6) of s. 570.44, F.S.; making technical corrections referring to Part II of Chapter 487 as created in the bill.

Section 37: Requests the Division of Statutory Revision to designate s. 487.011, F.S., through s. 487.175, F.S., as Part I of the chapter and s. 487.2011, F.S., through s. 487.2071, F.S., as Part II of the chapter.

Section 38: The bill takes effect July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Agriculture and Consumer Services estimates that total costs for implementing provisions of the bill for FY 2004-05 would be \$469,890. Subsequent years' costs would be \$331,014 annually. Estimated non-recurring costs for FY 2004-05 include four vehicles (\$80,000), the development of an application for pesticide complaints (\$31,510), and operating capital outlay for the six FTEs (\$9,000). Estimated recurring costs include six FTEs (\$346,680) and information technology maintenance costs (\$2,700).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Agricultural employers will be required to furnish general pesticide safety information and a written document that provides technical information about specific agricultural pesticides to workers. Estimated costs for this are unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Department of Agriculture and Consumer Services to adopt rules that implement certain federal regulations established by the Environmental Protection Agency related to worker safety and pesticides.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 7 of the bill provides penalties for agricultural workers who violate nay provision of the newly created Part II of chapter 487. Penalties include those found in s. 487.175, F.S., which are for persons who violate current statutory provisions for the sale and distribution of agricultural pesticides. These penalties include a criminal misdemeanor charge and a \$10,000 civil fine. Under the bill, these penalties will also apply to agricultural employers who fail to provide agricultural pesticide information to workers as provided for in the newly created Part II of chapter 487.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.